Supreme Court, U.S.
FILED
No. 051546 FEB 14 2006
IN THE OFFICE OF THE CLERK

Supreme Court of the United States

LINDA STETLER, DENNY STETLER, AND L.D.R., INC.,
Petitioners,

versus

FIRST SOUTHERN NATIONAL BANK, WARD CORRELL, LAKE CUMBERLAND SHELL AND CLINTON COUNTY, KENTUCKY,
Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The Commonwealth Of Kentucky

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SUPPLEMENTAL APPENDIX

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COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 2004-CA-001801-MR

L.D.R., INC., ET AL. APPELLANTS

v. APPEAL FROM CLINTON CIRCUIT COURT
ACTION NO. 99-CI-00129

FIRST SOUTHERN NATIONAL
BANK, ET AL. APPELLEES

ORDER DISMISSING APPEAL

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BEFORE: JOHNSON AND MCANULTY, JUDGES;
MILLER, SENIOR JUDGE[1]

This matter is before the Court on appellees' motion to dismiss appeal to which appellants responded. Appellees contend that the appeal was not timely filed. The Court is in agreement and, therefore, it is ORDERED that appellees' motion to dismiss appeal be GRANTED.

The background of this matter is as follows. An order confirming sale was issued on June 26, 2004. Appellants filed a timely CR 59 motion, which was denied on July 12, 2004, with the notation pursuant to CR 77.04(2) being made on the same date. No notice of appeal was filed within thirty days thereafter. Appellants then filed a motion pursuant to CR 60.02, which was denied on August 2, 2004. The notice of appeal was filed on September 1, 2004.

Appellees argue that the time in which to file a notice of appeal began running on July 12, 2004, and expired on

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1. Senior Judge John D. Miller sitting as Special Judge by asignment of the Chirf Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580

August 12, 2004, and that the filing of the motion pursuant to CR 60.02 is of no consequence. In response, appellants strongly object to this assertion. They claim that their appeal is timely because the denial of a motion pursuant to CR 60.02 is final and appealable and they "filed a timely appeal to this Court from the Judgment denying their motion to set aside judgment."

The Court has reviewed the notice of appeal and notes that it designates the judgment of June 26, 2004, and the order denying the motion pursuant to CR 59.[2] The notice of appeal does not specifically designate the order denying the motion pursuant to CR 60.02. In addition, a review of the issues listed in the prehearing statement makes it clear that appellants' intent was to challenge the merits of the June 26, 2004, judgment, rather than raising the issue as to whether the trial court abused its discretion in denying their motion pursuant to CR 60.02. However, the time in which to appeal from the June 26, 2004, judgment expired thirty (30) days following July 12, 2004. The Court concludes that this appeal is untimely.

Based on the foregoing, it is ORDERED that Appeal No. 2004-CA-001801-MR be DISMISSED.

ENTERED: DEC. 27, 2004

William E. McAnulty, Jr.
Judge, Court of Appeals

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2. The notice of appeal erroneously states that said order was entered on August 2, 2004.